

## REMARKS

Applicants appreciate the Examiner's thorough examination of the present application evidenced by the detailed final Office Action mailed September 6, 2005 (hereinafter "final Office Action"). Applicants further appreciate the indication that Claims 2, 3, 5-13, 15-18, 20-23, 25-31, 33-39, and 41-44 recite patentable subject matter. The present Amendment addresses the objections to Claim 40 and the rejections of independent Claims 1, 14, 24, 32, 36 and 40 under 35 U.S.C. § 112, first and second paragraphs.

Applicants appreciate the Examiner's pointing out the error in Claim 40, and have amended the claim to remove this error using a different phrasing than that suggested by the Examiner. Applicants request entry of this amendment, as it raises no new issues, introduces no new matter and places Claim 40 in condition for allowance.

With regard to the § 112 rejections, in an Amendment filed April 21, 2005, Applicants amended each of these claims to include recitation of "a common channel coding including a common spreading code." The final Office Action alleges that such recitations represent new matter. Applicants respectfully traverse these rejections.

As an initial matter, Applicants submit that the reasoning provided in support of the § 112, first paragraph rejections is vague, contradictory and irrelevant to the issue of new matter. In the first two paragraphs of page 3 of the final Office Action repeatedly refers to "the Specification" without any indication as to what document this refers. It appears that this is not a reference to the specification of the present application, as the final Office Action cites paragraph numbers, and no such paragraph numbering is provided in the present application. If "the Specification" does refer to a document other than the present application, Applicants submit that the disclosure of some other reference is irrelevant to the question of whether or not the disclosure of the present application supports the subject matter of the claims. If "the Specification" refers to the present application, Applicants respectfully request a clear indication as to which portions of the present application are being referred to in these paragraphs.

In the third paragraph of page 3, the final Office Action states:

The Specification discloses "a method of communicating with a wireless terminal" which seems to originate from a node or base station. However, the Specification does not disclose a method that is "simultaneously communicating between the wireless terminal and respective ones of the first and second nodes

according to the second identified radio configuration using a common channel coding including a common spreading code" which seems to originate from the wireless terminal traveling between two nodes, and this is new matter.

The reference to "the Specification" appears to contradict the use of "the Specification" in the preceding two paragraphs, as the final Office Action appears to be referring to the specification of the present application in this third paragraph. In addition, it is unclear as to what specific point is being made with respect to the comment regarding "origination." There is no limitation as to "origination" in the claims. The claim recitations, e.g., "communicating *between* the wireless terminal and respective ones of the first and second nodes," do not limit to a particular directionality, i.e., communication can be from the terminal to the node and/or from the node to the terminal. This phrasing was used in the original claims and, therefore, is not new matter.

Applicants further submit that the added recitations are clearly supported by the disclosure of the present application as filed. For example, Applicants refer to the description of FIG. 3 beginning on page 9, line 23 of the present application:

FIG. 3 illustrates exemplary operations 300 according to embodiments of the present invention. A wireless terminal and a first node (e.g., a first base station) of a wireless communications system communicate according to a first radio configuration (Block 310). A second radio configuration supported by a second node (e.g., a second base station) is identified (Block 320). For example, a radio configuration control circuit located at the first node and/or at the terminal (such as the radio configuration control circuit 122 of FIG. 1 and/or the radio configuration control circuit 262 of FIG. 2) may identify the second node as a candidate node for handoff or for some other diversity transmission/reception mode, and may identify the second radio configuration as a radio configuration that is commonly supported by the terminal and the first and second nodes.

*Responsive to identification of the commonly supported radio configuration, the wireless terminal simultaneously communicates with respective ones of the first and second nodes using the identified common radio configuration* (Block 330). For example, a first radio configuration control circuit, such as the radio configuration control circuit 122 of FIG. 1, may be operatively associated with the first node. In concert with a second radio configuration control circuit located at the wireless terminal (e.g., the radio control circuit 262 of FIG. 2), *the first radio configuration control circuit may cause the first and second nodes to simultaneously transmit the same information encoded according to the same channel coding (including spreading code)*. A RAKE receiver of the wireless terminal may process a composite signal including the first and second signals transmitted from the respective first and second nodes according to a RAKE process to recover the transmitted information.

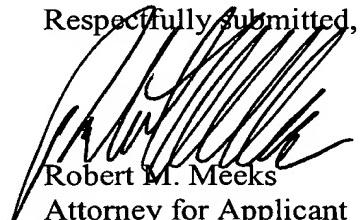
RAKE receiver operations are known to those skilled in the art, and will not be discussed in greater detail herein.

In other words, this passage describes a wireless terminal simultaneously communicating with two nodes using the "same" channel coding, i.e., a *common*, channel coding including a *common* spreading code. Therefore, the additional recitations in Claims 1, 14, 24, 32, 36 and 40 do not introduce new matter.

The § 112, second paragraph rejections are similarly erroneous. The final Office Action states that "[i]t is unclear what is the direction of communication "using a common channel coding including a common spreading code" as amended in all these claims and what is the significance of which to the invention." Final Office Action, p. 4. As explained above, the claims recite "between" so that they are applicable to communication in either direction. The significance of "a common channel coding and common spreading code" was thoroughly explained in the Amendment filed April 21, 2005 with respect to distinguishing the claims over the cited U.S. Patent No. 6,567,666 to Czaja et al. and U.S. Patent Application Publication US2002/0085514 to Illidge et al. See Amendment of April 21, 2005, pp. 12-15. In the interest of brevity, Applicants incorporate those remarks herein by reference.

For at least the foregoing reasons, Applicants submit that the rejections of Claims 1, 14, 24, 32, 36 and 40 are erroneous. Accordingly, Applicants respectfully request withdrawal of these rejections, allowance of the claims and passing of the application to issue in due course. Applicant encourages the Examiner to contact the undersigned by telephone to address any remaining issues.

Respectfully submitted,



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